

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

United States of America,

Case No.: 2:16-cr-00279-JAD-PAL-2

Plaintiff

**Order Denying Motion to Reduce
Restitution Payments**

v.

Fedel Ezekiel Sakers,

[ECF No. 401]

Defendant

In 2018, Fedel Ezekiel Sakers was sentenced to 16 years in prison after pleading guilty to committing an armed robbery of a jewelry store.¹ He was also ordered to pay \$334,791.51 in restitution to the jewelry store and its insurance provider.² I ordered that the restitution payment be due immediately and required that “[a]ny unpaid balance shall be paid at a monthly rate of not less than 10% of any income earned during incarceration and/or gross income while on supervision, subject to adjustment by the [c]ourt based on ability to pay.”³ Sakers now asks the court to “reduce [his] monthly [f]ederal [r]estitution [p]ayments.”⁴ He represents that 50% of his wages are being deducted monthly to pay off his restitution and asks that the amount be reduced so that he can send money to his three children and his sick mother.⁵ I construe this motion as a challenge to the Bureau of Prison’s administration of its Inmate Financial Responsibility

¹ ECF No. 270 at 1–2.

² *Id.* at 6–8. Sakers and his co-defendant are jointly and severally liable for the restitution amount. *Id.*

³ *Id.* at 7.

⁴ ECF No. 401 at 1.

⁵ *Id.*

1 Program, and I deny it because such a challenge can be made only through a habeas petition
 2 brought in the district in which Sakers is incarcerated, which is not this district.

3 Discussion

4 **I. Challenges to the prison’s method of collecting restitution may only be made** 5 **through a habeas petition.**

6 While incarcerated, Sakers has been making restitution payments through his voluntary
 7 participation in the Inmate Financial Responsibility Program (IFRP), a work program run by the
 8 Bureau of Prisons (BOP) to encourage “each sentenced inmate to meet his or her financial
 9 obligations.”⁶ Challenges to the BOP’s administration of that program are best construed as a
 10 challenge to the execution of an inmate’s sentence and thus must be made by filing a writ of
 11 habeas corpus under 28 U.S.C. § 2241 in the district of the inmate’s confinement.⁷ That is what
 12 Sakers seeks to do here—he does not challenge his restitution amount or the payment schedule
 13 as set out in his judgment. Indeed, he affirms that he intends to pay the full amount of restitution
 14 owed.⁸ He instead requests a reduction in the BOP’s assessment of what he can pay each
 15 month.⁹ Sakers is therefore challenging the execution of his restitution payments. To mount

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 17 ⁶ 28 C.F.R. § 545.10; ECF No. 403 at 2–3 (confirming Sakers’s participation in the IFRP).

18 ⁷ See *Hernandez v. Campbell*, 204 F.3d 861, 864–65 (9th Cir. 2000) (noting that “petitions that
 19 challenge the manner, location, or conditions of a sentence’s execution must be brought [under]
 20 § 2241 in the custodial court”); *United States v. Lemoine*, 546 F.3d 1042, 1046 (9th Cir. 2008)
 (resolving appeals from motion to reduce restitution in the sentencing court and a later-filed
 21 § 2241 petition in the custodial court and applying the standard of review for appeals of habeas
 petitions); *Ward v. Chavez*, 678 F.3d 1042, 1045–52 (9th Cir. 2012) (resolving appeal of § 2241
 petition challenging administration of IFRP program).

22 ⁸ ECF No. 401 at 1 (noting that he is currently making restitution payments and “one day
 hopefully [] will be able to repay in full”).

23 ⁹ The BOP has procedures in place to assess monthly payment amounts for inmates participating
 in the IFPR. See 28 C.F.R. § 545.11. The regulations explain that some inmates “ordinarily will
 be expected to allot not less than 50% of their monthly pay to the payment process” and that any

1 such a challenge, he must exhaust his administrative remedies and file a habeas petition in the
 2 district in which he is incarcerated—the United States District for the Middle District of Florida.

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 4 **II. I decline to construe Sakers’s motion as one to adjust restitution under 18 U.S.C. § 3664(k).**

5 The government argues that, if Sakers’s motion is construed as one to adjust the
 6 restitution amount or schedule under 18 U.S.C. § 3664(k), it also fails. I do not reach the merits
 7 of the government’s argument because I decline to construe Sakers’s motion that way. Section
 8 3664(k) imposes a duty on defendants to inform the court of any “material change in the
 9 defendant’s economic circumstances that might affect the defendant’s ability to pay
 10 restitution.”¹⁰ After receiving such notification, the court may “adjust the payment schedule, or
 11 require immediate payment in full, as the interests of justice require.”¹¹ But Sakers does not ask
 12 that the court adjust the terms of his restitution schedule—that schedule merely requires that at
 13 least 10% of his prison wages are put toward restitution on a per-month basis.¹² Sakers takes
 14 issue with monthly 50% deductions that the BOP has assessed, not with the amount of restitution
 15 itself, the monthly payment schedule, or the 10% minimum ordered by the court. Instead, he
 16 focuses solely on the amount withdrawn that exceeds the amount ordered. Those details are left
 17 to the BOP; to challenge them, Sakers must first exhaust his administrative remedies and then
 18 file a habeas petition in the Middle District of Florida.

19
 20
 21 allotment less than that “must be approved by the Unit Manager.” *Id.* at § 545.11(b)(2). This is
 22 the payment schedule that Sakers appears to take issue with.

23 ¹⁰ 18 U.S.C. § 3664(k).

¹¹ *Id.*

¹² ECF No. 270 at 7.

Conclusion

IT IS THEREFORE ORDERED that Fedel Sakers's motion to reduce restitution payments [ECF No. 401] is **DENIED** without prejudice to his ability to file a proper challenge in the Middle District of Florida.



U.S. District Judge Jennifer A. Dorsey
July 14, 2022